

Message Text

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ACTION SEC-01

INFO OCT-01 EUR-12 ISO-00 SSO-00 EB-08 TRSE-00 L-03

INR-07 INRE-00 /032 W

-----031812 021219Z /12

O 021045Z DEC 77

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 5351

UNCLAS BERN 5664

PASS SEC FOR BOROWSKI

EO 11652: N/A

TAGS: CFED, SZ

SUBJ: AIC CASE

REF: BOROWSKI/KEMP TELCONS NOV 30 AND DEC 1; BERN 5116

1. SUMMARY: UNDERSTAND FROM MR BOROWSKI THAT JUDGE GESELL, SEC UNHAPPY CURRENT STATUS THIS CASE. PROBLEMS CAUSING DELAYS ARE RELATED POTENTIAL TAX LIABILITY INVESTORS, REFUSAL SWISS CREDIT BANK RENEW LETTER CREDIT VOLUNTARILY, AND FAILURE TO DATE ON PART SWISS BANKING COMMISSION TO RULE ON OBJECTIONS SWISS-APPOINTED COMMISSIONER TO METHOD PROPOSED FOR DISTRIBUTION CERTAIN ASSETS TO INVESTORS. PURPOSE THIS MESSAGE IS TO SEEK FURTHER INFO AND REQUEST GUIDANCE/INSTRUCTIONS. END SUMMARY.

2. TAX LIABILITY: THIS WAS FIRST DISCUSSED WITH SEC IN LATE JULY. AGREED STRATEGY, TO BE CARRIED OUT ON RETURN POL/ECOUNS FROM HOME LEAVE EARLY SEPT, WAS TRY PERSUADE SWISS THROUGH BANKING COMMISSION THAT INFORMAL COMMITMENT HAD BEEN MADE BY MUELLER, NOW DIRECTOR, SECRETARIAT, SWISS FEDERAL BANKING COMMISSION, AND/OR OTHERS EARLY DISCUSSIONS THAT NO PROBLEM
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TAX LIABILITY WOULD ARISE IN CONNECTION DISTRIBUTION ASSETS. FURTHER DISCUSSIONS SEC IN SEPT/OCT RESULTED IN LETTER FROM EMBASSY TO MUELLER OCT 28 AND HIS RESPONSE NOV 1 (REFTEL). TEXT FINAL VERSION LETTER SENT MULLER BEING SENT SEPTTEL. GIST MUELLER RESPONSE THAT NO SUCH COMMITMENT MADE AND THAT NO SUCH COMMITMENT COULD HAVE BEEN MADE SINCE NO ONE OTHER

THAN TAX AUTHORITIES CULD MAKE SUCH A COMMITMENT. SWISS INVOLVED HAD EARLIER TAKEN SAME POSITION IN DISCUSSIONS WITH POL/ECOUNS. SINCE EMBASSY MINUTES CONTAIN NO WRITTEN RECORD OF ANY STATEMENT BY SWISS ON TAXES AND WE WERE INFORMED NO RECORD ON FILE IN SEC, EMBASSY WITH CONCURRENCE MUELLER AND SEC, SENT LETTER TO DR KURT LOCHER, WHOSE OFFICE SEIZED WITH MATTER, ON NOV 4 WHICH DID NOT CONTAIN ASSERTION COMMITMENT MADE ON TAX LIABILITY. TEXT THIS LETTER ALSO BEING TRANSMITTED SEPTEL. EMBASSY UNDERSTOOD THAT LETTER WAS TO PREPARE GROUND FOR MID-NOV VISIT ERNEST SERGEANT, US COURT-APPOINTED SPECIAL CONSEL THIS CASE, WHO WOULD DISCUSS ISSUE FURTHER WITH TAX AUTHORITIES. SWISS-APPOINTED COMMISSIONER HAD ALREADY DONE SO, HAD BEEN ASSURED EXPEDITIOUS HANDLING AND THAT TAX AUTHORITIES AWARE INTL ASPECTS, IMPLICATIONS OF CASE. MUELLER INFORMED POL/ECOUNS HE ALSO HAD WRITTEN TAX AUTHORITIES ALONG LINES EMBASSY NOV 4 LETTER.

3. EMBASSY INFORMED NOV 30 SERGEANT VISIT DID NOT TAKE PLACE. EFFORTS MADE DEC 1 OBTAIN FURTHER INFO FROM VARIOUS SWISS PARTIES LED TO STATEMENT QUESTION TAX LIBILITY WULD BE DECIDED BY SWISS TAX AUTHORITIES, ATTEMPTS TO NEGOTIATE AMOUNT WOULD BE REJECTED AS IMPROPER, THAT CASE OFFICER NOT AVAILABLE UNTIL MONDAY, DEC 5, AND THAT OTHERS RELUCTANT ATTEMPT UNCLASSIFIED

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GO THROUGH FILE IN MEANTIME.

4. SEC HAS ASKED FOR EMBASSY PRESENCE AT MEETING BETWEEN SERGEANT, SWISS TAX AUTHORITIES AND POSSIBLY OTHERS DURING WEEK DEC 13. WE ARE ANXIOUS BE AS HELPFUL AS POSSIBLE, BUT WILL NEED GUIDANCE AND INSTRUCTIONS FROM DEPT AS TO WHAT IS PRECISE PURPOSE THIS MEETING, WHAT IS TO BE ACCOMPLISHED AND PROPOSED ROLE EMBASSY. WE WILL TRY TO REACH SWISS TAX OFFICER HANDLING CASE DEC 5, AND ARE TRYING CONTACT COOPERS-LYBRAND AND COMMISSIONER STUDER TO OBTAIN INFO WHERE MTTER ACTUALLY STANDS. WILL REPORT RESULTS.

5. LETTER OF CREDIT: DOES SEC WISH EMBASSY APPROACH SWISS CREDIT BANK? IF SO, REQUEST INSTRUCTIONS ON BASIS OF WHICH TO MAKE SUCH AN APPROACH.

6. PROBLEM WITH SWISS FEDERAL BANKING COMMISSION: IN DEC 1 TELCON BOROWSKI REFERRED TO THIS ISSUE. UNDERSTAND IT RELATES TO RULING SWISS FEDERAL BANKING COMMISSION WAS TO MAKE IN NOV ON SWISS-APPOINTED

COMMISSIONER STUDER'S OBJECTIONS TO PROPOSED METHOD
DISTRIBUTION CERTAIN ASSETS TO INVESTORS. EMBASSY
WILL TAKE QUESTION UP WITH BANKING COMMISSION BUT
WILL NEED FULL INFO ON FACTS, DATES, NATURE
PROBLEM AND DESIRED ACTION IN ORDER MAKE EFFECTIVE
PRESENTATION. REQUEST GUIDANCE/INSTRUCTIONS.

7. ACTION REQUESTED: DEPTS GUIDANCE AND INSTRUCTIONS
ON ALL THREE QUESTIONS:

A) TAX ISSUE;

B) LETTER OF CREDIT AND

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C) PROBLEM WITH STUDER/BANKING COMMISSION RE
DISTRIBUTION ASSETS.
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Message Attributes

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